

EXHIBIT 7

98rrcit1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

2 THE CITY OF NEW YORK, et al,

3

3 Plaintiffs,

4 -v-

04 CV 3417

5 EXXON MOBIL CORPORATION, et al,

6 Defendants.

6 -----x

7

New York, N.Y.

7

August 27, 2009

8

10:00 a.m.

8

9 Before:

9

10 HON. SHIRA A. SCHEINDLIN,

10

11

District Judge

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APPEARANCES

12

13 MICHAEL A. CARDOZO

13 Corporation Counsel of the City of New York

14 Attorneys for City Plaintiffs

14 BY SUSAN E. AMRON

15

15 SHER LEFF LLP

16 BY: VICTOR M. SHER

16 JOSHUA STEIN

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17 GREENBERG GLUSKER

18 Attorneys for Plaintiffs

18 BY: ROBERT S. CHAPMAN

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19 MCDERMOTT, WILL & EMERY

20 Attorneys for Defendant Exxon Mobil

20 BY: PETER JOHN SACRIPANTI

21 JAMES PARDO

21 WILLIAM STACK

22 JENNIFER KALNINS TEMPLE

22 ANTHONY BONGIORNO

23

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98R7CIT4

Burns - direct

1 adducts, the aqueducts, the bridges, this is kind of like that,
2 and it forms a bridge between a part of these two strands, and
3 what happens is when they are supposed to come apart, when your
4 cells are supposed to replicated in your heart, in your liver,
5 in your lungs, any other part of your body, they can't do that
6 accurately. And there are a variety of ways that that can play
7 out. You can have them simply stuck together and not sending
8 the messages they need to send, but more often than not you get
9 breaks in them.

10 So, if you were to put these two together, and this is
11 trying to come apart, you can imagine, well, it's going to come
12 apart but it's not going to come apart just right, you are
13 going to have pieces stuck together; and then in the long run,
14 when it tries to copy accurately, it will copy inaccurately.
15 And so that's how we get a mutation. The message that it's
16 supposed to send in this sequence, that this sequence is
17 supposed to send with these specifically combinations of atoms,
18 becomes inaccurate.

19 And we know DNA adducts are related to cancer. There
20 have been literally hundreds of studies that show that. And in
21 fact when they look at tumors they often times see a higher
22 level of DNA adducts than you would expect. So, we have a
23 connection here between one type of mutation that MTBE can
24 cause and cancer.

25 Q. Based upon your experience, is MTBE in water a particular

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Burns - direct

1 concern from a public health and toxicological standpoint?
2 A. It is definitely more of a concern because it's in water.
3 And the reason is that we need water throughout the course of
4 the day. We wake up, we take a shower, we make coffee or make
5 orange juice, and as you can see from this there are just a
6 variety of different ways that we rely on water throughout the
7 day.

8 In the area I live in, I'm up from Boston where it's
9 awfully cold in the winter, we humidify our houses in the
10 winter and we put a lot of water into the air. When that water
11 goes into the air it can carry whatever is in the water with
12 it.

13 In addition, MTBE is semivolatile. What that means is
14 if you were to set a glass of water with MTBE on the counter,
15 the MTBE would have some ability to move out of that water into
16 the air independent of the water. So, it has a couple
17 different ways of getting into the air.

18 And if you just look at the variety of different ways
19 that people have water with them every day, I think that you
20 can see, you know, we can get bottled water but we can't really
21 avoid coming into contact with the water, which is why we
22 protect it in such a determined way.

23 Public health is about protection, and some of the
24 earliest efforts in public health, even going back into Greek
25 and Roman times, were to protect the water, and that's a major

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Burns - direct

- 1 A. Yes, it was.
2 Q. And is it still an appropriate question?
3 A. It is.
4 Q. And number three, whether boiling increases or reduces
5 contaminant concentration, was that an appropriate question to
6 ask back in 1984 from a public health standpoint?
7 A. Yes.
8 Q. And is it still an appropriate question?
9 A. Yes, it is.
10 Q. In connection with your work in the toxicology field and in
11 the public health field, have you reached any conclusions
12 concerning whether or not MTBE is a carcinogen?
13 A. Yes, I have.
14 Q. What are those conclusions?
15 A. I have concluded, based on a careful review of the science,
16 that it is an animal carcinogen and that it's a probable human
17 carcinogen.
18 Q. Have you reached a conclusion as to whether MTBE is a
19 mutagen?
20 A. Yes.
21 Q. What is that opinion?
22 A. It is a probable human mutagen.
23 Q. How do toxicologists and public health officials typically
24 determine whether a substance may cause cancer?
25 A. Toxicologists evaluate whether or not something is likely

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1 (Question read)

2 A. Yes, absolutely.

3 THE COURT: That's your view from a public health
4 standpoint?

5 THE WITNESS: That's from a public health standpoint
6 as a scientist.

7 BY MR. CHAPMAN:

8 Q. Are you familiar with what "MCL" means?

9 A. Yes: Maximum contaminant level.

10 Q. In your work have you come into contact with MCL?

11 A. Yes. I helped to establish MCL's for the State of New
12 Jersey, for the federal government, and the federal drinking
13 water program, and I continue to provide comments from the
14 public health perspective on federal MCL's as they are
15 proposed.

16 Q. What is an MCL?

17 A. An MCL is a maximum amount of a contaminant, usually a
18 chemical, that is allowable in water. It's the most
19 contamination that is permitted by a state or by the federal
20 government. In this case we are talking about drinking water.
21 Usually MCL's are for drinking water.

22 Q. Based upon your experience, what factors are typically
23 taken into account when the state sets an MCL?

24 A. Usually there are a number of factors taken into account.
25 Health is taken into account. But in addition to that,

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1 economic issues are taken into account: Feasibility, can it be
2 removed, how would that occur, and stakeholder interests or the
3 interests of parties that have specific concerns about
4 regulating a particular chemical.

5 Q. What do you mean by "stakeholder"?

6 A. Stakeholders are organizations or individuals or parties
7 that have an interest in how the MCL is set. So one of the
8 things that I did in my work for EPA was to request
9 stakeholders, a variety of different interested parties, to
10 provide input when we were setting federal regulations.

11 Q. In other words, a company that might manufacture a chemical
12 might have one interest and an environmental group might have
13 another interest, and both of those interests are considered,
14 is that right?

15 A. That's right.

16 Q. Does the EPA have an MCL for MTBE?

17 A. No, they do not.

18 Q. You're not a medical doctor, are you?

19 A. That's right.

20 Q. Does a toxicologist or public health official have to be a
21 medical doctor to make their opinions valid?

22 A. No.

23 Q. Why is that?

24 A. We have training specifically in the ways that chemicals or
25 other agents can affect people in addition to our training in

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991dcit1 Schindler - redirect

1 A. No. I believe our goal is to minimize all of the
2 contaminants as low as we can below the MCL.

3 Q. With respect to the Cat/Del water system, is the city's
4 goal merely to comply with MCLs in the water that it delivers
5 to its customers?

6 A. No. As I stated yesterday, our goal is to always try and
7 deliver the highest water quality possible within our system.
8 We go to great lengths, through our monitoring programs,
9 through review of our water quality data, to achieve that goal,
10 and we take use of the flexibility of our system to deliver the
11 highest quality water possible at any given time.

12 Q. Now, you were shown a chart by counsel yesterday comparing
13 the MCLG, the maximum contaminant limit goal, for PCE and for
14 MTBE; do you recall that?

15 A. Yes.

16 Q. And the U.S. EPA has set a maximum contaminant limit goal
17 for PCE of zero, is that correct?

18 A. Yes.

19 Q. And the chart shows "not applicable" with respect to MTBE.
20 Do you remember that?

21 A. Yes.

22 Q. To your knowledge, does MTBE (sic) set an MCLG before it
23 decides to regulate a contaminant?

24 MS. KALNINS TEMPLE: Objection, your Honor. Yesterday
25 the witness testified that he didn't have a great understanding

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991dcit1 Schindler - redirect

1 recall that?

2 A. Yes.

3 Q. Could you tell the jury your role in that discussion and
4 what the outcome of it was?

5 A. Sure. There was internal discussion about bringing other
6 wells back online. It actually was, I believe, in late 2006.
7 It was my feeling at the time, since there were samples that
8 had been taken from those wells historically that had contained
9 MTBE, and I believe other contaminants, that we should not be
10 bringing those wells online because of the risk of delivering
11 MTBE to the consumer. There was some internal discussion on
12 that with different bureaus and our agency, and it got elevated
13 to the commissioner's office. And we had a meeting with the
14 commissioner. And the commissioner was clear to us that we
15 were not to be delivering water from those wells if they
16 contained --

17 MS. KALNINS TEMPLE: Your Honor, I would object. This
18 is hearsay.

19 MR. SHER: I think the witness can testify to what the
20 directive was from his boss.

21 THE COURT: Wait a second. Let me read his answer.

22 (Pause)

23 OK. Other than the last sentence about what the
24 commissioner said, the rest of the answer can stand.

25 Q. What directive did you take as the outcome of the

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